THE TAOS NEWS
(/)
NEWS

Taos electric co-op says Tri-State offer 'insulting'

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Posted Wednesday, January 14, 2015 7:15 pm

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Kit Carson Electric Cooperative is officially seeking another power supplier after being told it would cost $137 million to get out of its existing contract.

Co-op CEO Luís Reyes called the exit proposal from Denver-based Tri-State Generation and Transmission "insulting," and the co-op has pledged to move ahead with four new solar projects that Tri-State may oppose.

The co-op buys wholesale electricity from Tri-State, but it has been at odds with that company for years over a slew of issues. The co-op has accused Tri-State of arbitrary rate increases and has long denounced a clause in its supplier contract that limits the co-op's development of renewable energy to 5 percent of its energy consumption.

The co-op successfully blocked a rate increase from Tri-State that was originally proposed in 2012. As part of that effort, Kit Carson and three other New Mexico co-ops convinced state regulators to look into Tri-State's rate structure. In response, Tri-State filed a federal lawsuit arguing it was beyond the jurisdiction of state regulators, and all sides were preparing for what looked like a long and expensive battle over electric rates.

But last fall, Tri-State and several New Mexico co-ops agreed to begin closed-door negotiations to come up with a "global settlement" that would bypass regulators and the courts while resolving the outstanding issues.

To get the negotiations off the ground, the New Mexico co-ops served by Tri-State agreed to a temporary rate increase that would give Tri-State an additional $7 million a year in revenues. The temporary rate increase is set to expire at the end of 2015. In turn, Tri-State promised to give the co-ops terms by which they could get out of their contracts.

So far, however, the success of the negotiations appears limited.

Under the agreement to enter negotiations, Tri-State was obliged to provide a "good faith" exit offer to any co-op that asked to get out of its contract. Kit Carson's contract with Tri-State does not expire until 2040, and it asked for a proposal to find a new supplier.

All parties involved in the negotiations are limited to what they can say publicly by non-disclosure agreements. But co-op CEO Reyes said the proposal received last month was a "non-starter." He said the terms of Tri-State's exit offer would require Kit Carson to pay Tri-State $137 million to cancel the contract and allow Kit Carson to find another power provider.

"The proposal they gave us was disingenuous and disappointing," Reyes said. "It was really insulting."

In an apparent reaction to that insult, the co-op board voted at the end of December to move forward on four solar projects in Peñasco, Tres Piedras, Angel Fire and Eagle Nest. Combined, the energy produced at those arrays will likely push the co-op to the edge of its contractual limit on renewable energy production, and past a limit established by a separate Tri-State policy.

“We’re going to build [the arrays],” Reyes said. “Our members want it, and we’re not going to let [Tri-State] push the co-op around.”

But a spokesman for Tri-State said the offer was legitimate and it was willing to stick with the talks.

"All of our New Mexico members have received a good faith proposal and we continue to work collaboratively towards a settlement," said Lee Boughey in an email to The Taos News. "We are all in the early stages of a complex process that Tri-State is dedicated to see through."

Reyes said the co-op is willing to stick with the negotiations for a couple months to see if it can make any progress. In the meantime, the temporary rate increase will remain in effect and co-op customers will continue paying more for power. The higher rates add about $1.10 a month to the average residential customer’s bill.

For that reason, Reyes said it was important to set “hard deadlines” this spring to either reach an agreement with Tri-State or ask regulators to step in and move ahead with an investigation of Tri-State’s rates.

Reyes said the co-op has talked with other power suppliers, but details are still being discussed and no firm proposals or cost estimates are ready.

In 2013, the co-op bought more than $22 million worth of wholesale electricity from Tri-State.

The co-op has recently seen net margins of around $1 million a year, though they’ve fluctuated from year to year. All told, the co-op has about as much in total assets and Tri-State has asked for to end the contract.

Reyes said Tri-State calculated its exit formula by multiplying the annual revenue it collects from Kit Carson and multiplying it by the number of years remaining in the contract, then subtracting Tri-State’s costs.

Tri-State used a similar methodology when five Nebraska co-ops asked to be release from their contracts and were told it would cost a total of $200 million. A lawsuit filed by the co-ops in federal court said the proposal was completely unreasonable and accused Tri-State of keeping them “captive in an increasingly intolerable situation that Tri-State simply refuses to acknowledge, let alone correct.”

Despite those claims, a federal jury sided with Tri-State last June and did not find it guilty of on civil breach of contract charges.

If negotiations ultimately fail, Reyes said the co-op could ask a federal court to invalidate its contract with Tri-State. Reyes asserts Tri-State was disingenuous when the contracts were first signed because it agreed to a clause that would give state regulators authority to investigate rate hikes it three or more New Mexico co-ops protested the increase. When that happened for the first time a couple years ago, Tri-State immediately went to federal court and claimed the same provision was unconstitutional.